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IN THE

Supreme Court of the United States

October Term, 1970

No. 70-54
(1092)

VICTORY CARRIERS INC., S.S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

QUESTION PRESENTED FOR REVIEW

As originally stated in Petitioners' brief in chief filed herein the question presented for review is:

Does the warranty of seaworthiness owed by a vessel extend to the operator of a fork lift machine who is operating the machine exclusively upon the dock moving cargo from its position of dockside storage to a point on the dock from which it is subsequently loaded onto the vessel and who is injured by reason of some fault in the lift machine and not by the vessel or its equipment?

RECENT DECISIONS

A. Decisions in Support of Petitioners' Argument.

Since the time of filing of Petitioners' brief herein, there have been several decisions, all originating in the United States District Court of Maryland (but decided by different District Judges), wherein the warranty of seaworthiness was denied to longshoremen injured on the shore by shorebased equipment. These cases are *Sydnor vs. Villian & Fassioe Compania Internationale di Riunite di Navigazione,* (D.C. Md., 1971) 323 F.Supp. 850; (*Diggs vs. American Export Isbrandtsen Lines, Inc.,* (D.C. Md., February 24, 1971, Civil Action No. 21557-N);[1] and a consolidated opinion entered in five (5) unrelated cases, *Green vs. Pope & Talbott, Inc.,* etc., (D.C. Md., 1971) 328 F.Supp. 71.

In the *Sydnor* case a longshoreman was injured on the dock when struck in the back by a bale of rags; the rags were pushed over by a tractor as it was transferring the bales on the pier in preparation for their loading onto the defendant vessel. The injured longshoreman claimed the vessel was unseaworthy and negligent and contended "that the preparatory loading of a vessel in navigable waters is work in the ship's service." 323 F.Supp. 850 at 851. The Court considered the cases of *Byrd vs. American Export Isbrandtsen Lines Inc.,* (E.D. Pa., 1969) 300 F.Supp. 1207; *Litwinowicz vs. Weyerhouse S.S. Co.,* (E.D. Pa., 1959) 179 F.

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[1]The case of *Diggs vs. American Export Isbrandtsen Lines, Inc.* has not been reported and a copy of said opinion is appended hereto as Appendix A for the ready reference of the Court.

Supp. 812; and *Gutierrez vs. Waterman S.S. Corp.*, 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297, as well as other decisions and stated that:

> "This court feels that to hold liable a ship for the injuries suffered by a stevedore, incurred upon the dock in preparation for the loading of the vessel, where no ship's personnel, gear or appurtenances were involved, is an unwarranted extension of the maritime doctrine of unseaworthiness." 323 F.Supp. at 852-3.

The District Court then discussed this Court's recent decisions of *Nacirema Operating Co., Inc. vs. Johnson*, 396 U.S. 212, 90 S.Ct. 347, 24 L.Ed.2d 371 (1969); and *Usner vs. Luckenbach Overseas Corp.*, 400 U.S. 494, 91 S.Ct. 514, 27 L.Ed.2d 562 (1971) and concluded:

> "Based upon the Supreme Court's recent holdings, this court feels that liability of a vessel is being circumscribed; and when, as in this case, a longshoreman is injured on the pier by pier-based equipment, when no ship's equipment or personnel are involved and no pier-based equipment is being used in the actual loading or unloading of the vessel, no recovery should be permitted against the vessel." 323 F.Supp. 850 at 853.

In *Diggs vs. American Export Isbrandtsen Lines, Inc.*, supra, (Appendix A) a longshoreman was working in a boxcar on the pier near the vessel when he was injured. The longshoreman's specific task was to

stow cargo (located in the boxcar) in a metal case which would be pulled from the boxcar by a cable attached to a tractor located upon the pier and driven by a fellow longshoreman. The tractor driver, without waiting for orders or giving any warning, moved the tractor which caused the cable to wrap around the plaintiff-longshoreman's leg and injure him. The District Court, relying on its own *Sydnor* case, supra, and *Usner vs. Luckenbach Overseas Corp.*, supra, held:

> "In this case, the undisputed allegations show the accident occurred as a result of discharging cargo from a boxcar and not from the loading or unloading of cargo from a vessel. The locus of the accident was upon the pier, between fellow longshoremen, involving no ship's gear, appurtenances or personnel or pier-based equipment, such as cranes, conveyors, etc., used in the loading of a vessel. These facts fail to state a claim upon which relief can be granted and defendant's motion to dismiss is therefore granted."

The *Green vs. Pope & Talbott, Inc., supra,* decision involved five (5) cases consolidated for purposes of the opinion. In addition to the *Green* case, the opinion also considered the cases of *Randolph vs. Central Gulf Steamship Corp.* (Adm. No. 4997), *Robinson vs. Grace Lines, Inc.* (Civil Action No. 18189), *Eaddy vs. Ember Dampfercompagnie A. G. Aktiengesellschaft* (Civil Action No. 18220), and *Miles vs. S.S. Prodromos* (Civil Action No. 19814). The District Court declined to extend the seaworthiness warranty to a longshoreman who

was struck by a case which fell from a pallet in a warehouse after having been discharged directly from the vessel into the warehouse (Green); to a longshoreman who was working in a gondola car from which cargo was being loaded onto a vessel when the hook from a shore-based crane struck the gondola car (Randolph); to a longshoreman who fell over a piece of wood on the pier while guiding a pontoon being lowered from a vessel to the pier (Robinson); to a longshoreman injured in the warehouse by a defective pallet which had just come from a vessel (Eaddy); and to a longshoreman who was injured inside a grain elevator when a control box for the conveyor belt exploded (Miles).

After a scholarly review of developments in the area of maritime torts, including this Court's decisions of *Gutierrez, Nacirema,* and *Usner,* the District Court in *Green* refers to the cases of *Gebhard vs. S.S. Hawaiian Legislator,* (9 Cir., 1970) 425 F.2d 1303; *Chagois vs. Lykes Bros. S.S. Co.,* (5 Cir., 1970) 432 F.2d 388; and to the Fifth Circuit Court of Appeals decision in the instant case, *Law vs. Victory Carriers, Inc.,* (5 Cir., 1970) 432 F.2d 376 and comments on these latter three cases as follows:

> "The general approach of these and similar all-expansive cases is that if someone who may be called a 'longshoreman' is injured on a pier or in a pier-based structure, he should be allowed to recover from any vessel that happens to be berthed at the pier and the ship's owner. This 'liability without theory' ignores the situs of

> the injury, ignores causation, ignores whether realistically the ship is being loaded or unloaded, and ignores the true status of the injured party. This court rejects such an approach as not in accord with the Supreme Court's most recent decisions." 328 F.Supp. 71 at 86.

The Court in *Green* was of the opinion *Nacirema Operating Co., Inc. vs. Johnson,* supra, was dispositive of jurisdictional questions presented in the consolidated cases which arose from accidents which occurred on the pier and were caused by pier-based equipment. In particular the Court relies on Mr. Justice White's language in *Nacirema* as follows:

> "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, *since longshoremen injured on a pier by pier-based equipment would* still remain ouside the [Extension] Act. And construing the Longshoremen's Act to coincide with the limits of admiralty and jurisdiction — whatever they may be and however they may change — simply replaces one line with another . . . 396 U.S. at 222-23." 328 F. Supp. 71 at 84.

B. *Contrary Decision.*

A contrary result has been reached in the recent

case of *McNeil vs. A/S Havtor,* (E.D. Pa., 1971) 326 F. Supp. 226. In *McNeil* a longshoreman was injured when a "squeeze lift" truck he was operating struck an undetermined object on a pier shed floor; as a result of the striking, the steering wheel of the truck spun and a knob attached to the wheel struck the longshoreman's wrist. The longshoreman was operating the lift truck within the confines of a warehouse where he would transfer cases from pallets owned by his employer to pallets to pallets owned by the defendant; these pallets would then be taken by other fork lift operators to alongside the vessel for ultimate loading onto the vessel. The district court, relying on the Court of Appeals decision in the instant case and *Byrd vs. American Export Isbrandsten Lines,* (E.D. Pa., 1969) 300 F.Supp. 1207, held that the longshoreman "performing the operation indicated by the instant facts was, as a matter of law, engaged in the loading process and in the service of the ship." The Court further found the claimant was "entitled to the benefits of the doctrine of unseaworthiness."

Consequently, the district court in *McNeil,* relying upon what Petitioners herein earnestly urge to be the erroneous ruling of the Court below, has moved the seaworthiness warranty even further ashore. The Court in *McNeil* gives no consideration to the Extension of Admiralty Jurisdiction Act and justifies its holding upon the conclusion that as a *matter of law* the claimant was engaged in the loading process and in the service of the ship even though the claimant was working exclusively in a warehouse and was apparently injured through some fault in the warehouse floor

coupled with a knob on the steering wheel of the lift truck he was operating. The court, as did the Court below, noted that this was not an unreasonable or harsh application of the unseaworthiness rule because the ship owner could pass the burden along to the stevedore under an indemnity theory. Thus, it is again illustrated, as in the instant case, that the vessel is assigned a secondary, passive role in the application of the seaworthiness doctrine. As observed by the Court in *Green vs. Pope & Talbott, Inc.*, supra.

> "This 'liability without theory' ignores the situs of the injury, ignores causation, ignores whether realistically the ship is being loaded or unloaded, and ignores the true status of the injured party." 328 F.Supp. 71 at 86.

To this observation of the Maryland District Court may be added that this unwarranted extension of the seaworthiness ambit ashore completely ignores the basic rationale for imposing absolute liability on a ship owner for unseaworthiness In *Mahnich vs. Southern S.S. Co.*, 1944, 321 U.S. 96, 64 S. Ct. 455, 88 L.Ed. 561, this Court imposed absolute liability upon a ship owner because of the unique nature of a seaman's calling, and stated:

> "We have often had occasion to emphasize the conditions of the seaman's employment . . . which have been deemed to make him a ward of admiralty and to place large responsibility for his safety on the owner. He is subject to the rigorous discipline of the sea, and all the con-

> ditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers. These conditions, which have generated the exacting requirement that the vessel or the owner must provide the seaman with seaworthy appliances with which to do his work, likewise require the safe appliances be furnished when and where the work is done." 321 U.S. at 103-4.

Bill Law, the Respondent herein, was not subject to the rigorous discipline of the sea nor were the conditions of his employment such as would constrain him to accept, without critical examination or protest, working conditions or appliances furnished by the vessel. He was in no manner subjected to any conditions which may have existed on board the vessel nor was he injured by any cargo, appurtenance, equipment, or appliance of the vessel. He was free to either accept or reject the working conditions and the lift machine involved; an election which was not available to the true sea-going seaman.

The court below in the instant case and in its opinion of *Chagois vs. Lykes Bros. S.S. Co.*, (5 Cir., 1970) 432 F.2d 388, and the *McNeil vs. A/S Havtor* district court case, supra, have clearly departed from this court's decisions of *Gutierrez vs. Waterman Steamship Corp.*, supra; *Nacirema Operating Company vs. Johnson*, supra; and *Usner vs. Luckenbach Overseas Corporation*, supra, and have extended the seaworthiness doctrine beyond the intent of this Honorable Court. The

Court of Appeals in the instant case has visited liability for unseaworthiness upon the vessel even though the injury was sustained wholly ashore (some fifty (50) feet from the vessel) and was caused by non-vessel equipment (a fork lift machine) operated exclusively upon the pier; the same Court of Appeals in its decision of *Chagois vs Lykes Bros Steamship Company, Inc.*, supra, subsequently carried the seaworthiness warranty further ashore; and *McNeil vs. A/S Havtor*, supra, has extended the warranty even further into the pier-located warehouse. If the instant case is not reversed, the next step will be to extend the warranty into the inland warehouse or to the truck or train bringing cargo to the dock from far inland.

It is submitted that the most logical and realistic view on the issue before the Court is that expressed by the District Court below in the instant case and by the District Court of Maryland in the recent cases of *Sydnor, Diggs,* and *Green* referred to herein.[2] The warranty of seaworthiness should not be extended to those instances where a longshoreman or dockside worker is injured upon a dock or in a warehouse while preparing for the loading of a vessel where none of the ship's personnel, gear, equipment, or appurtenances are involved in the accident. The holding of the Court of Appeals in the instant case that a pier-based worker who is injured solely by pier-based equipment on the

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[2]See also the cases cited in Petitioners' brief in chief of *Drumgold vs. Plovba*, (E.D. Va., 1966) 260 F.Supp. 983; *Partenweederei, MS Belgrano vs. Weigel*, (9 Cir., 1962) 299 F.2d 897; *Daniel vs. Skibs A/S Hilda Knudsen*, (3 Cir., 1966) 368 F.2d 178; and *Cannida vs. Central Gulf Steamship Corporation*, (E.D. Pa., 1970) 317 F.Supp. 873.

pier is entitled to sue the vessel for unseaworthiness is erroneous and should be reversed.

CONCLUSION

In those cases involving the issue presently before the Court which have come to the attention of Petitioners since filing their brief in chief herein, the prevalent view, based on logic and authority, has been to deny the seaworthiness warranty to a pier-based worker injured ashore by pier-based equipment. For the reasons stated herein and in Petitioners' brief in chief, the judgment of the Court below should be reversed and the cause remanded with direction to affirm the judgment of the district court.

Respectfully submitted,

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PROOF OF SERVICE

I, W. BOYD REEVES, one of the attorneys for the Petitioners herein and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the _____ day of September, 1971, I served three copies of the foregoing Supplemental Brief of Petitioners on Bill Law, Respondent herein, by mailing the same in a duly addressed envelope, with first class postage prepaid, to Honorable Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama, 36602, and to Honorable Joseph B. Stahl, 804 Baronne Building, 305 Baronne Street, New Orleans, Louisiana, 70112, attorneys for Respondent.

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYWOOD C. DIGGS

v. Civil Action No. 21557-N

AMERICAN EXPORT ISBRANDTSEN LINES, INC.

Filed: February 24, 1971.

Jerome B. Monfred and Monfred, Lentz & Hooper, of Baltimore, Maryland, for the Plaintiff.

Randall C. Coleman, John C. Murphy and Ober, Grimes & Shriver, of Baltimore, Maryland for the Defendant.

Northrop, Chief Judge.

Plaintiff, Maywood C. Diggs, a longshoreman for the Atlantic & Gulf Stevedores, brings suit under this court's admiralty and maritime jurisdiction against the American Export Isbrandtsen Lines, Inc., owner and operator of the vessel SS EXPORT AMBASSADOR. The facts alleged by the plaintiff are undisputed.

Plaintiff states that on or about the 30th day of September, 1968, the vessel described above was

moored at Pier #8, Dundalk Marine Terimal, for the purpose of loading cargo. In the course of discharging his duties as a longshoreman, the plaintiff was called upon to enter a boxcar located near the vessel to assist in removing its cargo. Plaintiff's specific function was to stow cargo in a metal case that would be pulled from the boxcar by a cable attached to a tractor located upon the pier and driven by a fellow longshoreman. While performing this duty, the tractor driver, without waiting for orders or giving any warning, moved the tractor. As the tractor moved, the cable which was attached to one end of the tractor and around one of the cases got hooked under the door of the boxcar and wrapped around plaintiff's leg. As the cable tightened it caused injury to his leg. Plaintiff alleges that this accident was the result of the vessel's unseaworthiness and the defendant's negligence. There is no allegation, however, by the plaintiff that any of the vessel's gear, appurtenances, or personnel were involved in any manner or caused the accident nor was there any shore-based equipment in use in the loading of the vessel involved.

This vourt feels that this case can be decided on the basis of its recent decision in *Sydnor v. Villian & Fassioe Compania Internazionale di Genova Societa Riunite di Navigazione, S.p.A.*, Civil No. 21021-N (D. Md., filed February 23, 1971), a copy of which is attached hereto. In that case, a longshoreman was injured on the pier when a bale of rags was pushed over on him by a tractor, driven by another longshoreman, who was transferring the bales to another part of the pier in preparation for their loading on the defendant vessel.

No use was being made of any ship's gear or personnel and there was no pier-based gear in use in the actual loading of this vessel. All activity and equipment of which the plaintiff complained was being used in preparation for the loading. This court held that the single act of negligence by one longshoreman to another did not require a finding of unseaworthiness. This decision was based upon the recent Supreme Court decision in *Usner v. Luckenbach Overseas Corp.*, 39 U.S.L.W. 4146 (1971) and the Fourth Circuit and district court opinions in *Lundy v. Isthmian Lines, Inc.*, 423 F.2d 913 (4th Cir. 1970), and *Benton v. United States Lines, Inc.*, 297 F. Supp. 87 (D. Md. 1968), *aff'd*, 408 F.2d 378 (4th Cir. 1969). In this case, the undisputed allegations show the accident occurred as a result of discharging cargo from a boxcar and not from the loading or unloading of cargo from a vessel. The locus of the accident was upon the pier, between fellow longshoremen, involving no ship's gear, appurtenances or personnel or pier-based equipment, such as cranes, conveyors, etc., used in the loading of a vessel. These facts fail to state a claim upon which relief can be granted and defendant's motion to dismiss is therefore granted.

Edward S. Northrop
Chief United States
District Judge